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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

| | |
|---------------------------|--|
| Proceeding | 91227926 |
| Party | Defendant Earthy LLC |
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| Date | 06/24/2016 |
| Attachments | EARTHY LLC Answer to BBHC LLC Notice of Opposition.pdf(14667 bytes) |

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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|--------------|---|---------------------------|
| BB&HC, LLC, |) | |
| |) | |
| Opposer, |) | |
| |) | Opposition No.: 91227926 |
| |) | |
| v. |) | Application No: 86/822838 |
| |) | |
| EARTHY, LLC, |) | Mark: EARTHY DELIGHTS |
| |) | |
| Applicant. |) | |

ANSWER OF EARTHY, LLC

Applicant EARTHY, LLC (“Applicant”) submits the following Answer to Opposer BB&HC LLC’s (“Opposer”) Notice of Opposition.

In response to the first un-numbered paragraph of the Notice of Opposition, Applicant admits that on November 17, 2015, it filed Application No. 86,822,838 for the mark EARTHY ORGANIC. Applicant lacks sufficient knowledge to form a belief about the truth of the remaining allegations in this first un-numbered paragraph.

PARTIES

1. Applicant admits the allegations in Paragraph 1 of the Notice of Opposition.
2. Applicant admits the allegations in Paragraph 2 of the Notice of Opposition.

OPPOSER’S BUSINESS

3. Applicant lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 3 of the Notice of Opposition.
4. Applicant lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 4 of the Notice of Opposition.

5. Applicant lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 5 of the Notice of Opposition.

6. Applicant lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 6 of the Notice of Opposition.

7. Applicant lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 7 of the Notice of Opposition.

8. Applicant lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 8 of the Notice of Opposition.

9. Applicant lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 9 of the Notice of Opposition.

10. Applicant lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 10 of the Notice of Opposition.

OPPOSER'S TRADEMARK RIGHTS

11. Applicant admits that BB&HC owns a trademark registration for EARTHY DELIGHTS for “gourmet food items, namely specialty vinegars” (Reg. No. 2,608,911), but denies the registration is valid and denies the remaining allegations in Paragraph 11 of the Notice of Opposition.

12. Applicant admits that the registration for EARTHY DELIGHTS is listed as incontestable in the records of the USPTO but denies the registration is valid and denies the remaining allegations in Paragraph 12 of the Notice of Opposition.

13. Applicant denies the allegations in Paragraph 13 of the Notice of Opposition.

14. Applicant lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 14 of the Notice of Opposition.

15. Applicant denies the allegations in Paragraph 15 of the Notice of Opposition.
16. Applicant admits that an assignment was recorded in the USPTO, but denies the remaining allegations in Paragraph 16 of the Notice of Opposition.
17. Applicant lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 17 of the Notice of Opposition.
18. Applicant lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 18 of the Notice of Opposition.

DISCOVERY OF APPLICANT'S BUSINESS AND INFRINGEMENT

19. Applicant admits the allegations in Paragraph 19 of the Notice of Opposition.
20. Applicant admits the allegations in Paragraph 20 of the Notice of Opposition.
21. Applicant admits the allegations in Paragraph 21 of the Notice of Opposition.
22. Applicant admits the allegations in Paragraph 22 of the Notice of Opposition.
23. Applicant admits the allegations in Paragraph 23 of the Notice of Opposition.
24. Applicant admits the allegations in Paragraph 24 of the Notice of Opposition.
25. Applicant denies the allegations in Paragraph 25 of the Notice of Opposition.

OPPOSER'S GROUNDS FOR OPPOSITION

COUNT I – Applicant's application for registration is likely to cause confusion with

Opposer's registered and common law EARTHY DELIGHTS trademark.

26. Applicant incorporates its responses to the prior paragraphs.
27. Applicant admits that BB&HC owns a registered trademark for EARTHY DELIGHTS but denies the registration is valid.
28. Applicant admits that the trademark for EARTHY DELIGHTS is listed as incontestable in the records of the USPTO but denies the registration is valid.

29. Applicant denies the allegations in Paragraph 29 of the Notice of Opposition.
30. Applicant denies the allegations in Paragraph 30 of the Notice of Opposition.
31. Applicant denies the allegations in Paragraph 31 of the Notice of Opposition.
32. Applicant denies the allegations in Paragraph 32 of the Notice of Opposition.
33. Applicant denies the allegations in Paragraph 33 of the Notice of Opposition.
34. Applicant denies the allegations in Paragraph 34 of the Notice of Opposition.
35. Applicant denies the allegations in Paragraph 35 of the Notice of Opposition.

AFFIRMATIVE DEFENSES, INCLUDING TRADEMARK CANCELLATION

1. Opposer's Notice of Opposition fails to state a claim upon which relief may be granted.
2. Opposer's Notice of Opposition is barred because the registered mark was abandoned as use was discontinued without an intent to resume; thus, Applicant requests that the Board cancel BB&HC's trademark registration for EARTHY DELIGHTS, Registration No. 2608911.
3. Opposer's Notice of Opposition is barred by the doctrine of unclean hands.

Applicant reserves the right to assert additional affirmative defenses as knowledge of those becomes available through discovery.

PRAYER FOR RELIEF

Responding to Opposer's Prayer for Relief, Applicant respectfully requests that this Notice of Opposition be dismissed with prejudice and that Opposer's registration be cancelled.

Dated: June 24, 2016

Daniel Christus
McDermott Will & Emery LLP

Attorneys for Applicant

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing Answer was served upon counsel for Opposer BB&HC, LLC, by first-class mail, postage-prepaid, this 24th day of June, 2016, addressed as follows:

John Di Giacomo, Esq.
Revision Legal, PLLC
109 E. Front St. Suite 309
Traverse City, MI 49684

/s/ _____
Daniel Christus
McDermott Will & Emery LLP

Attorney for Applicant

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